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Globalization and Health

Challenges for health law and bioethics

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PREFACE

Within contemporary society, globalization has emerged as a key concern at the centre of ethical, legal and policy debates relating to health care. Conflicts between public interests and individual rights, the challenge of regulating health professionals and access to health services, and the effects of a global market all feature prominently in these discussions. As a result of globalization, these issues can no longer be understood solely within the political boundaries that define traditional notions of individuals and communities. Rather, solutions demand a global conception of rights and obligations, which in turn requires new approaches to health policy formulation and a reevaluation of existing ethical and legal frameworks. In essence, the impact of globalization on human health is testing the robustness of modern regulatory systems, legal doctrines and ethical paradigms.

PUBLIC HEALTH: DEVELOPING GLOBAL CONCERNS

The interconnectedness of the global economy presents new challenges in public health. While globalization has facilitated improvements in health care, it has also created new hazards and avenues for the exploitation of vulnerable persons. It is becoming increasingly apparent that both national and international responses are required. Indeed, as the chapters in this section convey, public health is rightly a global concern.

Globalization has led to a sharing of both risks and responsibilities in public health. Belinda Bennett reminds us of the ease with which infectious diseases can spread within the global community, given the speed of modern travel and trade. Despite a long history of the impact of infectious diseases on human society, the SARS crisis in 2003 demonstrated the ongoing importance of having efficient public health infrastructures at national *and* international levels. However, as Bennett notes, “the huge disparities in health and health infrastructure that exist between countries continue to undermine the ability of countries to respond rapidly and effectively to outbreaks of infectious disease.”

Bennett’s critique of the SARS crisis also shows how concerns about public health become acute at the interface between the developed and the developing worlds, which raises important questions about the meanings of rights and obligations in an international context. The evolving field of bioethics would play a vital role in addressing such dilemmas. Udo Schüklenk and Braimoh Bello argue, however, that much of bioethics discourse has focused on high-tech issues such as stem cell research and nanotechnologies, and “traditional liberal bread-and-butter issues of informed consent and individual autonomy.” They argue that bioethics should instead focus on issues that affect many more people in the world – issues

that address global inequities in health care between developed and developing countries. To that end, they propose a range of topics that should receive greater attention by professional bioethicists: the 10/90 gap in health research, the transnational organ trade, access to essential medicines, health-based immigration restrictions, international research ethics and the flow of health information. According to Schüklenk and Bello, a refocusing of bioethics as a field of inquiry is essential if it is to have continued contemporary relevance.

The evolution of public health as a global concern invokes questions about global social justice. As argued by George F. Tomossy and Joylon Ford, the quest for cures exposes fundamental deficiencies in legal doctrines insofar as they may prevent access to justice. They examine the plight of developing world subjects who may become injured in the course of first-world sponsored clinical trials, and who face significant legal obstacles when seeking compensation from multinational pharmaceutical corporations. Concerns about distributive justice thus come into conflict with the corporate incentive to pursue profits within a global market. Tomossy and Ford argue that citizens of one jurisdiction should not be exposed to risks of harm in order to benefit others, and would call upon investigators, sponsors and regulators alike to protect developing world subjects. They advocate that access to justice by developing world plaintiffs should be facilitated in first-world courts, which will require correcting procedural and substantive legal impediments that are presently almost insurmountable.

Finally, concerns about global social justice and public health invite consideration of the ethical grounds upon which arguments for obligations on the part of individuals, corporations and governments in the developed world towards developing countries might be based. This theme is explored by Deborah Zion, who analyzes obligations in terms of a duty of beneficence, efficacy, justice and integrity. She proposes that setting up processes to analyze the effects, burdens and benefits of clinical research would be a vital starting point towards relieving global health care inequities.

THE GLOBAL BIO-ECONOMY: CONSENSUS AND INNOVATION

The viability of national regulatory systems is continually being confronted by a global market for health care that is driven by the forces of innovation and health care consumerism. The emergence of a global bio-economy has created the need for transnational regulation of biotechnology and medical products. While generating consensus in health care policy formulation has always been a challenge, it is particularly so against the backdrop of globalization where consensus needs to be located at both national and international levels. And, as in the previous section, ethical issues permeate these discussions.

Derek Morgan argues that “we stand on the threshold of what might be thought to be a new dimension in the relationship of human sciences to biotechnology.” He proposes that the emergent “bio-economy” is set to transform our lives in the same all-encompassing manner brought about by the industrial age and advent of the

computer. With the key societal concerns for these stages having related to environmental degradation and privacy respectively, he predicts that the central issue in the new economy will be ethics. In order to resolve some of the current debates in this regard (for example, cloning, genetic patenting and bio-engineered foods), Morgan argues that the development of international consensus will require the implementation of “biomedical diplomacy,” informed by traditional tools of “rhetoric, persuasion, negotiation, and economic and political leverage.” The rationale for this process, he maintains, must be based on “rethinking equity in health,” without which “all talk about human values, human dignity, human rights and democratic balance will be so much empty rhetoric.”

Our understandings of “the global” and of “risk” help to shape responses to innovative technologies in health. Drawing upon the example of regulatory debates surrounding genetically modified foods in the United Kingdom, Alan Irwin considers the relationship between internationalized patterns of innovation and the development of national policy processes. His analysis reveals how differing conceptualizations of “the global” can exist within public discourses about innovation, and how the interaction between “the global” and “the national” affects the construction of regulatory debates. Irwin argues that these debates present political challenges in the need to formulate “more open cultures of deliberation and reflection,” and that it is important “to move away from simply presenting globalization as an objective (and generally irresistible) force and towards an acknowledgement of its varied manifestations and social constructions.”

Thomas Faunce explores the link between innovation and corporate globalization by examining the intersection of international trade law and domestic health policy. His critique addresses the impact of US-derived global intellectual property policies on government pricing of pharmaceuticals in Australia. He traces the evolution of these policies to their corporate origins in the United States and explores their enforcement through both international trade mechanisms and bilateral treaties. Faunce cautions that these policies represent “a significant, emerging problem for global public health,” and urges greater attention to principles in bioethics, public health and international human rights in order to ensure affordable access to essential medicines.

As with trade, advertising is being recognized as a critical force in the global economy. Its relevance is particularly significant in today’s consumer society where advertising plays a vital role in the development and expansion of markets for health products. Patricia Peppin analyzes the challenges associated with regulating advertising of pharmaceutical products through a comparative overview of the regulatory frameworks for advertising of medicines in the United States, Canada, the European Union, Australia and New Zealand. Drawing on semiotic theory, Peppin explores the construction of meanings through the information and images used in advertisements and the interpretation of those meanings by consumers. She warns of “significant public health consequences” associated with passing on advertising costs to health systems and with commodifying the doctor-patient relationship.

Globalization clearly presents significant difficulties for crafting consensus on regulatory policy in the area of biotechnology. This theme is explored by Timothy Caulfield and Barbara von Tigerstrom. Using the examples of gene patents and laws designed to limit human cloning, they reveal the competing tensions that emerge from global debates surrounding these issues. As they note, the demand for extensive regulatory intervention exists; however, “differing cultural and socio-political positions magnify the policy-making challenge.” The authors acknowledge the difficulties inherent in reaching consensus on contentious issues and the potential for international agreements to limit the scope of national policy making. Their analysis thus yields an important lesson: “there can be no simple template for understanding and addressing the implications of globalization for biotechnology policy.”

GLOBALIZATION AND HEALTH CARE

Having canvassed the implications of globalization for health care on a macro-level, this last section turns to the nexus between health care professionals and consumers. Globalization has had a fundamental effect on rights and obligations at the micro-level through its impact on national policies and legal systems. As these chapters show, the effects of globalization filter through to shape the rights of individuals and practices of the health professions.

Kerry Petersen’s examination of the rights of children conceived using donated gametes to access identifying information about their biological (donor) parent provides a case for the study of individual rights in health care in a global setting. Despite the absence of consistent national or international patterns governing assisted reproductive technologies, common themes and regulatory approaches emerge from international comparisons. Petersen’s critique thus reveals that incremental changes in regulatory reforms in this area favouring openness and disclosure of donor identity demonstrate the influence of human rights discourse on national health policy formulation.

John Harrington analyzes the impact of global market forces on national health systems, and signals the threat to national regulatory systems posed by health tourism and the commodification of human organs. Patients are increasingly travelling abroad in order to access health procedures. He argues that “consumption of health care, just like its provision, is no longer confined by national borders,” with the global trade in human organs continuing to defy attempts to curtail it. Indeed, Harrington notes that the taboo against commodification has started to erode, with the consensus against commodification coming apart “under pressure of the actually-existing market.”

In the final chapter in this collection, Ian Freckelton charts the emerging landscape in the global regulation of health care practitioners. Drawing on the experience of the United Kingdom, Canada, Australia and New Zealand, Freckelton maps the common regulatory trends that are emerging against the backdrop of this changing regulatory environment. He examines the changes caused by increasing

consumerism and availability of health information in the age of the Internet, as well as the issues that arise from increased global movement of health professionals, and the ethical issues arising from the recruitment of developing world health professionals to meet the needs of health systems in developed countries.

CONCLUSION

Across the three themes of this volume, globalization has emerged as a fundamental force shaping ethical, legal and policy debates in health. The authors in this volume have shown that all aspects of health care, whether one is speaking of individual rights, professional obligations or governmental policy, are invariably influenced by transnational factors. As has been observed in globalization discourse more generally, these effects have been both positive and negative. The obvious challenge facing all countries, developing or developed, is to embrace the benefits of a global bio-economy while avoiding its harms. As is increasingly evident from attempts to govern innovation in biotechnology and access to health care, however, legal and regulatory mechanisms can only go so far towards achieving this goal. From the collective efforts of our colleagues in this volume, we would therefore derive the conclusion that a sound ethical base is needed upon which to ground policy initiatives, whether at national or international levels, and regardless of the difficulties obtaining political consensus might present. Such a base, we suggest, must ultimately be grounded in global considerations about equity and respect for human rights.

Belinda Bennett and George F. Tomossy
Sydney, September 2005.

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